



DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, March 21, 2023

SPECIAL MEETING

At 5:30 p.m., Mayor Hung Wei called the Special City Council Meeting to order in the City Hall Conference Room C, 10300 Torre Avenue.

ROLL CALL

Present: Mayor Hung Wei, Vice Mayor Sheila Mohan, and Councilmembers Liang Chao, J.R. Fruen and Kitty Moore. Absent: none.

CLOSED SESSION

1. Subject: Liability Claim (Government Code § 54956.95)
Claimant: Gulu Sakhrani
Agency claimed against: City of Cupertino

Council met with legal counsel on Liability Claim (Government Code § 54956.95);
Claimant: Gulu Sakhrani; Agency claimed against: City of Cupertino

There was no reportable action.

2. Subject: Conference with legal counsel - existing litigation pursuant to Government Code § 54956.9 (two cases)
 - a. California Housing Defense Fund et al. v. City of Cupertino, Santa Clara County Superior Court Case No. 23CV4108
 - b. League of Women Voters of Cupertino-Sunnyvale v. City of Cupertino et. al., N.D. Cal. Case No. 4:22-cv-04189

Council met with legal counsel on existing litigation pursuant to Government Code § 54956.9 (two cases)

- a. California Housing Defense Fund et al. v. City of Cupertino, Santa Clara County Superior Court Case No. 23CV4108

- b. League of Women Voters of Cupertino-Sunnyvale v. City of Cupertino et. al.,
N.D. Cal. Case No. 4:22-cv-04189

There was no reportable action.

ADJOURNMENT

At 6:40 p.m., Mayor Wei adjourned the Special City Council Meeting.

REGULAR MEETING

At 6:48 p.m., Mayor Wei called the Regular City Council Meeting to order and led the Pledge of Allegiance in the Cupertino Community Hall Council Chamber, 10350 Torre Avenue and via teleconference.

ROLL CALL

Present: Mayor Hung Wei, Vice Mayor Sheila Mohan, and Councilmembers Liang Chao, J.R. Fruen and Kitty Moore. Absent: none.

CLOSED SESSION REPORT

City Attorney Chris Jensen conducted the open session report regarding the Special Meeting Closed Session held at 5:30 p.m. City Attorney Jensen reported that there was no reportable action.

Mayor Wei recognized and honored March as American Red Cross Month, and thanked the many volunteers and donors who help those in need.

Mayor Wei held a moment of silence in memory of Fremont Union High School District Board Member and former Lynbrook science teacher Roy Rocklin.

CEREMONIAL ITEMS – None

POSTPONEMENTS AND ORDERS OF THE DAY – None

ORAL COMMUNICATIONS

Jennifer Griffin supported starting work to restore the Stocklmeir House and preserving City history.

Brooke Ezzat was concerned about the removal of Planning Commissioner R Wang and disruptive behavior by the people that participated in the Council meeting.

Lisa Warren was concerned about a map for Main Street as a basis for a consultant report and supported the opening of Regnart Creek Trail and a definition for “undue influence.” (Submitted written comments).

San R was concerned about traffic conditions on McClellan Road and current CIP (Capital Improvement Projects) projects for bike-ped and roads and supported modifications.

Peggy Griffin was concerned about City income tax payments from CDTFA (California Department of Tax and Fee Administration) and lighting for the existing sign at Public Storage. (Submitted written comments).

Peter Morris (on behalf of Jane Huang) was concerned about existing litigation related to a playhouse structure that was removed in their backyard and requested resolution for the costs.

Huang Family had concerns about a legal matter regarding an illegal play structure in their backyard and supported working with the City for reimbursement of legal and material costs.

Housing Commissioner Tessa Parish (representing self) was concerned about disruptive behavior from the audience in the last City Council meeting and requested order in the future.

Moore and Chao added a future agenda item to discuss a policy for admonition and censorship for commissioners.

CONSENT CALENDAR (Items 1-6)

Mayor Wei opened the public comment period and, seeing no one, closed the public comment period.

Fruen moved and Mohan seconded to approve the items on the Consent Calendar, except for Items 3, 5, and 6 which were pulled for discussion. Ayes: Wei, Mohan, Chao, Fruen, and Moore. Noes: None. Abstain: None. Absent: None.

Wei moved and Fruen seconded to reorder the agenda to hear Item 6 after the Consent Calendar. The motion carried unanimously.

Items 3 and 5 were placed after the Action Calendar for consideration.

1. Subject: Consider approval of the March 1 City Council minutes and receive consultant

workshop report

Recommended Action: Approve the March 1 City Council minutes and receive the consultant workshop report (Exhibit A)

2. Subject: Consider approval of the March 7 City Council minutes
Recommended Action: Approve the March 7 City Council minutes

Written communications for this item included an amended Attachment A - Draft Minutes page 12.

4. Subject: Receive the Budget Process Review Final Report
Recommended Action: Receive the Budget Process Review Final Report

ITEMS REMOVED FROM THE CONSENT CALENDAR

As noted under Consent Calendar, the following item was heard before Public Hearings.

6. Subject: Consider authorizing execution of an On-Call Tree Maintenance Services Contract with West Coast Arborists, Inc.
Recommended Action: Authorize the City Manager to execute an On-Call Maintenance Service Contract with West Coast Arborists, Inc. for three years, at an annual amount not-to-exceed \$200,000 per year, for a total of \$600,000 and if performance is satisfactory, allow up to two additional years of service.

This item was pulled from the Consent Calendar for discussion.

Written communications for this item included desk items Attachment B - Tree Maintenance RFP 2022 and staff responses to councilmember questions.

Assistant Director of Public Works Jimmy Tan reviewed the staff report.

Councilmembers asked questions and made comments.

Mayor Wei opened the public comment period and the following people spoke.

Jennifer Griffin recommended West Coast Arborists.

Lisa Warren was concerned about the health and maintenance of City trees.

San R was concerned about the contract amount and terms of service.

Mayor Wei closed the public comment period.

Chao moved and Fruen seconded the staff recommendation to authorize the City Manager to execute an On-Call Maintenance Service Contract with West Coast Arborists, Inc. for three years, at an annual amount not-to-exceed \$200,000 per year, for a total of \$600,000 and if performance is satisfactory, allow up to two additional years of service. The motion carried unanimously.

PUBLIC HEARINGS

7. Subject: Consider petition for reconsideration regarding the City Council decision of February 7, 2023 to uphold the appeal in part, approve one of the two requested freeway-oriented signs, and deny the requested sign exception. Application No(s): EXC-2022-003; Applicant(s): David Ford (All Sign Services); Location: 20565 Valley Green Dr.; APN #326-10-044.

Recommended Action: That the City Council conduct a public hearing, adopt Resolution No. 23-039 (Attachment A) denying the petition for reconsideration.

Councilmembers disclosed any ex parte communications prior to deliberation in this matter.

Written communications for this item included a staff presentation, applicant/appellant presentation, a supplemental report with staff responses to councilmember questions and amended Attachment B – Petition for Reconsideration by Rhoda Fry, a desk item with staff responses to councilmember questions, and emails to Council.

Senior Planner Gian Martire reviewed the gave a presentation.

The petitioner gave a presentation.

Councilmembers asked questions and made comments.

Mayor Wei opened the public hearing and the following people spoke.

Jennifer Griffin supported maintaining dark skies and Highway 280 as a scenic highway and approving a sign that works for the community.

Albert Lee was concerned about the hours of lighting exceeding regulation allowances, maintaining Highway 280 as a scenic highway, and supported the reconsideration.

Housing Commissioner Connie Cunningham (representing self) supported approving the reconsideration, limiting the hours for lighting, and revisions to the Sign Ordinance.

Lisa Warren supported the petition for reconsideration and disagreed with the staff recommendation.

Brooke Ezzat shared video discussing the building, signage, and lighting impacts from Highway 280, including landscaping and hallway lighting.

Jun was concerned about the hours of lighting exceeding regulation allowances.

Danessa Techmanski opposed existing and new signage and supported the petition for reconsideration.

Housing Commissioner Govind Tatachari (representing self) supported the reconsideration and revising the Sign Ordinance and was concerned about light pollution.

Annie Yang (representing Santa Clara Valley Audubon Society Environmental Action Committee) opposed the sign, was concerned about artificial light hazards, and supported revising the Sign Code.

Peggy Griffin opposed the new sign, was concerned about lighting and Code violations, and supported approving the reconsideration.

Housing Commissioner Tessa Parish (representing self) was concerned about lighting hazards to animals and supported the reconsideration and conforming to regulation.

San R was concerned about resident outreach and feedback, the lighting impacts, and supported approving the reconsideration.

Mayor Wei closed the public hearing.

Moore moved and Chao seconded to accept the Petition for Reconsideration because the petitioner has demonstrated the decision was not supported by findings of fact regarding Code Sections 19.104.220 C and G, particularly with regards to what the signage looks like and impacts from various views on the freeway, and the explanation of these subdivisions was not adequately made, and that the petitioner provided new information not provided at an earlier hearing; namely, that the freeway oriented sign already in place fulfilled the allowance for the freeway oriented signage. This motion was not voted on.

Wei moved and Mohan seconded a substitute motion to approve the staff recommendation to adopt Resolution No. 23-039 denying the petition for reconsideration.

Chao moved and Moore seconded a second substitute motion to approve the reconsideration petition based on the following facts:

- The fact that **the definition for “freeway signs” and “visible” were not made available** to the Council.
- The fact that Sign One is a freeway facing sign according to the CMC and California Business and Profession Code was not available.
- The fact that **the development already has one freeway sign was not mentioned.**
- The fact that the **Council did not know Sign Two will be the second freeway sign.**
- The fact that there was **no information that the signs face the condos** across the I-280 and thus no information on its impact.
- The fact that **the City did not do our due diligence to notify residents** beyond the minimum requirement to include residential developments significantly impacted by the signs, at the discretion of the Community and Development Department.
- The fact that there was **no information that the illumination and the color has excessive illumination and glare** in an area, which is mostly dark.

Thus, the Council finds that there is

1. An offer of **new relevant evidence** which, in the exercise of reasonable diligence, could not have been produced at any earlier city hearing.
2. An offer of **relevant evidence which was improperly excluded** at any prior city hearing.
4. Proof of facts which demonstrate that the City Council **failed to provide a fair hearing.**
5. Proof of facts which demonstrate that the City Council abused its discretion by:
 - b. Rendering **a decision which was not supported by findings of fact;** and/or
 - c. Rendering **a decision in which the findings of fact were not supported by the evidence.**

The second substitute motion failed with Chao and Moore voting yes.

Final motion:

Wei moved and Mohan seconded a substitute motion to approve the staff recommendation to adopt Resolution No. 23-039 denying the petition for reconsideration. The substitute motion carried with Chao and Moore voting no.

Council recessed from 9:53 p.m. to 10:03 p.m.

8. Subject: Consider adoption of a Resolution approving Tamien Innu (Tamien Trail) as the officially recognized trail name for the I-280 Trail
Recommended Action: Conduct a public hearing and adopt Resolution No. 23-040 (Attachment A) approving Tamien Innu as the officially recognized trail name for the I-280 Trail

Written communications for this item included a staff presentation, a supplemental report

with staff responses to councilmember questions, and a desk item with staff responses to councilmember questions.

Public Works Project Manager Evelyn Moran gave a presentation.

Councilmembers asked questions and made comments.

Mayor Wei opened the public hearing and the following people spoke.

Jennifer Griffin supported preserving the history of California and naming the trail after Steve Jobs.

Lisa Warren supported ideas to improve survey participation.

John Zhao (representing the Bicycle Pedestrian Commission) reported that the Commission unanimously recommended renaming the trail as Tamien Innu.

Parks and Recreation Commissioner Jennifer Shearin (representing self) supported approval of naming as Tamien Innu.

Liana Crabtree supported renaming the trail as Tamien Innu.

San R was concerned about survey participation and supported postponing the item to gather more names and consider Hewlett and Packard and Jobs Trail.

Mayor Wei closed the public hearing.

Fruen moved and Moore seconded to adopt Resolution No. 23-040 approving Tamien Innu as the officially recognized trail name for the I-280 Trail. The motion carried unanimously.

Fruen moved and Mohan seconded to extend the meeting to 11:00 p.m. and to hear Item 10 before Item 9. The motion carried unanimously.

ACTION CALENDAR

10. Subject: 2022 General Plan Annual Report and Housing Element Annual Progress Report (APR) on forms required by HCD
Recommended Action: Receive reports and authorize submittal to the Department of Housing and Community Development (HCD)

Written communications for this item included a staff presentation and a desk item with staff responses to councilmember questions.

Housing Manager Kerri Heusler gave a presentation.

Councilmembers asked questions and made comments.

Mayor Wei opened the public comment period and the following people spoke.

Jennifer Griffin was concerned about certification, HCD (Housing and Community Development) management, and ministerial ADU (Accessory Dwelling Unit) implementation.

Parks and Recreation Commissioner Jennifer Shearin (representing self) was concerned about the lack of housing units built and supported a Housing Element for everyone.

Mayor Wei closed the public comment period.

Wei moved and Fruen seconded to receive the reports and authorize submittal to the Department of Housing and Community Development (HCD). The motion carried unanimously with Moore abstaining.

Fruen moved and Wei seconded to extend the meeting until 11:15 p.m. The motion carried unanimously.

9. Subject: Consider submitting a letter in opposition to the Taxpayer Protection and Government Accountability Act (Initiative No. 21-0042A)
Recommended Action: Approve the submission of a letter in opposition to the Taxpayer Protection and Government Accountability Act

Written communications for this item included a desk item with staff responses to councilmember questions.

City Attorney Chris Jensen reviewed the staff report.

Councilmembers asked questions and made comments.

Mayor Wei opened the public comment period and the following people spoke.

Jennifer Griffin supported restoring the Legislative Review Committee and opposing the legislation and was concerned about loss of local control.

Peggy Griffin supported including information on the initiative tax and final legislation text and asked about the consequences and risks to the City.

Mayor Wei closed the public comment period.

Wei moved and Mohan seconded to extend the meeting for ten minutes. The motion carried unanimously.

Wei moved and Fruen seconded to approve the submission of a letter in opposition to the Taxpayer Protection and Government Accountability Act. The motion carried unanimously with Chao abstaining.

ADJOURNMENT

City Manager Pamela Wu shared a video montage showing photos of the Closing the Gap: An Intergenerational Mixer and Regnart Creek Trail Ribbon Cutting Ceremony events.

At 11:26 p.m., Mayor Wei adjourned the Regular City Council Meeting per rule. There was no Council discussion on the remaining agenda items.

ITEMS REMOVED FROM THE CONSENT CALENDAR

The following items were pulled from the Consent Calendar and placed after the Action Calendar for discussion.

3. Subject: Consider staff reports and the attachments provided at the June 21, 2022 and March 7, 2023 City Council meetings regarding the Chamber of Commerce
Recommended Action: Receive the report on previously presented Chamber of Commerce related information

This item was pulled from the Consent Calendar for discussion.

Written communications for this item included a supplemental report with staff responses to councilmember questions.

This item was continued to the April 4 City Council meeting.

5. Subject: Consider authorizing execution of a Maintenance Services Contract for City-owned orchards.
Recommended Action: 1. Authorize the City Manager to execute the Maintenance

Service Contract with Anderson Tree Care Specialists, Inc. to provide orchard maintenance services for three years, at an annual amount not-to-exceed \$65,746, and if performance is satisfactory, allow up to two additional years of service.

2. Adopt Resolution No. 23-038 approving budget modification 2223-267 increasing appropriations in the Blackberry Farm Grounds Maintenance (100-84-811) and neighborhood Parks Maintenance (100-84-813) budgets by \$8,362 and \$3,875 respectively.

This item was pulled from the Consent Calendar for discussion.

Written communications for this item included a desk item with staff responses to councilmember questions and emails to Council.

This item was continued to the April 4 City Council meeting.

COUNCIL REPORTS AND COMMENTS

Council did not hear this item.

CITY MANAGER REPORT

Council did not hear this item.

ORAL COMMUNICATIONS - CONTINUED - None

INFORMATIONAL ITEMS – None

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

Council did not hear this item.

As noted under Oral Communications, Moore and Chao added a future agenda item to discuss a policy for admonition and censorship for commissioners.

Minutes prepared by:

Kirsten Squarcia, City Clerk